

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	

To: The Commission

**REPLY COMMENTS OF NEXTEL PARTNERS, INC.  
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

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## **SUMMARY**

Law and policy support a regime for local competition in which the originating carrier must provide local dialing parity to locally-rated numbers, and must take responsibility to deliver the call to the terminating carrier's network. The Rural Alliance and other ILEC groups seek to impose their costs on competitive carriers, and propose an inefficient, discriminatory, and anticompetitive requirement that locally-dialed traffic must be delivered over direct connections. The Commission should reject this proposal.

Nextel Partners supports a unified intercarrier compensation regime based on bill-and-keep. Small ILECs oppose bill-and-keep by claiming they have high costs that must be recovered within reciprocal compensation payments. Nextel Partners believes that federal and state universal service funding programs are already supporting these high-cost networks, and that once these funds are considered, the high reciprocal compensation rates demanded by small ILECs are not necessary to allow for appropriate cost recovery. The Commission should make a policy decision to provide appropriate support to fund high-cost networks through its universal service program, and establish an efficient bill-and-keep regime for intercarrier compensation that sends the right signals to consumers in the marketplace.

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Nextel Partners, Inc. hereby submits its reply comments on the *Further Notice of Proposed Rulemaking* ("*Further NPRM*")<sup>1</sup> in the above captioned proceeding. Nextel Partners' reply comments are limited to two issues. First, as explained in Nextel Partners' initial comments, law and policy support a regime for local competition in which the originating carrier must provide local dialing parity to locally-rated numbers, and must take responsibility to deliver the call to the terminating carrier's network. The Rural Alliance and other ILEC groups have filed comments seeking to transfer the cost of their traffic to terminating competitive carriers for reasons that do not stand up to scrutiny. They go even further, arguing for a rule that would condition local dialing on the presence of direct connections. This is inefficient, discriminatory, anticompetitive, and contrary to local dialing parity obligations. The Commission should reaffirm the importance of dialing parity and require every originating carrier of local traffic to deliver calls to the terminating carrier's network.

Second, Nextel Partners supports the bill-and-keep regime proposed by CTIA – The Wireless Association. Small ILECs oppose bill-and-keep by claiming they have high costs that

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<sup>1</sup> *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92, Further Notice of Proposed Rulemaking, FCC 05-33, 2005 WL 495087 (March 3, 2005) ("*Further NPRM*").

must be recovered within reciprocal compensation payments. Nextel Partners believes these carriers are already being paid for having high-cost networks by federal and state universal service funding mechanisms. Once these funds are considered, the high reciprocal compensation rates demanded by small ILECs cannot be justified. Moving forward, it is simply not necessary for the Commission to allow these carriers to be paid for the same network costs by multiple sources. The better policy decision is to fund high-cost networks through universal service mechanisms and establish a bill-and-keep regime for intercarrier compensation.

**I. THE COMMISSION SHOULD CONTINUE TO REQUIRE THE ORIGINATING CARRIER TO TAKE RESPONSIBILITY FOR DELIVERING LOCALLY-DIALED CALLS TO THE TERMINATING CARRIER'S NETWORK**

As a CMRS provider that serves many rural communities, Nextel Partners believes that it is essential that the Commission require originating ILECs to respect locally-rated numbers and take responsibility for delivering locally-dialed calls. The Commission should reject the Rural Alliance's attempt to undermine dialing parity and transfer ILEC obligations to competitive CMRS providers.

**A. The Law Today Requires Local Dialing Parity and Does not Require Direct Connections**

As Nextel Partners explained in its initial comments, the law today is clear that a CMRS provider licensed to serve an area that is also served by an ILEC can obtain numbers rated as local to that area without the need for a direct connection with the incumbent carrier.<sup>2</sup> The ILEC must allow calls to those numbers to be dialed locally because LECs must abide by local dialing parity obligations. 47 U.S.C. § 251(b)(3); 47 C.F.R. § 51.207. The ILEC cannot impose a direct connection requirement on its local competitor because of Commission rules that prohibit the incumbent from passing its own costs to a terminating carrier, and because a CMRS provider has

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<sup>2</sup> Nextel Partners Comments, pp. 19-21.

the right to choose indirect interconnection if that is consistent with its "most efficient technical and economic choices." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15499, ¶ 997 (1996) ("*First Report & Order*").

The Rural Alliance seeks to undermine the law by making the extraordinary statement that under current industry practice call rating does not depend on how a number block is assigned in the Local Exchange Routing Guide:

The Commission also asserts that standard industry practice is to look at a call's NPA-NXX to determine how the call should be rated, and then route the call accordingly. In fact, industry practice is just the opposite. The determination of whether a call is local or toll is based on the facilities used for routing and completing the call. If a call must use interexchange facilities—facilities beyond a LEC's local exchange or local calling area facilities—in order for its completion, such a call is properly treated as a telephone toll service call and should be rated as a toll call.<sup>3</sup>

This statement is not true, and if it were true it would be unlawful under local dialing parity rules. The Commission should reject the Rural Alliance's suggestion that local dialing parity is not standard industry practice.

Contrary to the Rural Alliance's Statement, the Commission has already determined that proper call rating is essential to local competition, even where local connections do not exist. In implementing local number portability the Commission has required that a number must be ported even where the new carrier has no direct connection with the incumbent:

Nothing in the rules provides that wireless carriers must port numbers only in cases where the requesting carrier has numbering resources and/or a direct interconnection in the rate center associated with the number to be ported and wireless carriers may not demand that carriers meet these conditions before porting.

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<sup>3</sup> Rural Alliance Comments, p. 132.

*In the Matter of Tel. Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order, FCC 03-237, 18 FCC Rcd. 20971, ¶ 21 (2003). The number must nonetheless keep its local rating:

To ensure that permitting porting beyond wireline rate center boundaries does not cause customer confusion with respect to charges for calls, we clarify that ported numbers must remain rated to their original rate center.

*In the Matter of Tel. Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 03-284, 18 FCC Rcd. 23,697, ¶ 39 (2003). This determination regarding the importance of number rating cannot be squared with the Rural Alliance's position that local dialing is solely a function of whether local interconnection facilities exist, and subject only to the unregulated discretion of an ILEC.

The Commission should recognize that its rules, industry practice and consumer expectations require that originating LECs respect the local rating of competitors' numbers, and should reject the Rural Alliance's attempt to read local dialing parity out of existing law. Upsetting these requirements would be a significant and disadvantageous change from the status quo.

**B. Mandatory Direct Connections are Not Efficient**

The Rural Alliance proposes that the Commission require direct connections in every exchange where a CMRS provider has local numbers.<sup>4</sup> The Commission should reject this inefficient and anticompetitive proposal.

A requirement that each competitive carrier establish a direct connection in every local exchange where it provides local competition would require inefficient network engineering. Dedicated facilities are efficient only at certain traffic levels, and in the absence of such levels

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<sup>4</sup> Rural Alliance Comments, pp. 132-33.

calls are more efficiently routed over common trunks. One can see this efficiency today in the context of equal access. IXC's that access small ILEC networks do not need to connect with every exchange, or even with every ILEC network. Instead, they generally connect at an off-network tandem, with calls delivered on common trunks to and from the ILEC network. From a network engineering standpoint, this is indistinguishable from tandem-routed local calling arrangements approved by the Tenth Circuit Court of Appeals and opposed by the Rural Alliance. *Atlas Tel. v. OCC*, 400 F.3d 1256, 1268 (10th Cir. 2005).

The comments of the Centralized Equal Access Providers tout the efficiency of this kind of network engineering.<sup>5</sup> These providers in Iowa, Minnesota and South Dakota explain that they provide "efficient and cost-effective equal access to the rural communities in their states by creating a network that creates a bridge between the IXC's network and all of the exchanges of the rural LECs."<sup>6</sup> Thus, "[a] single point of interconnection, traffic aggregation and the single source of network functionality provide efficiencies and cost savings for rural LECs, IXC's, and other carriers."<sup>7</sup> In other states, most rural LECs provide equal access in this same manner via the RBOC access tandem. Nextel Partners agrees that it is efficient to route calls to and from small networks through an off-network tandem switch on common trunks. This efficiency should be maintained and encouraged – not eliminated – in the context of local competition.

A Commission rule requiring a competitor to have direct connection in every exchange where it has locally rated numbers would be a mandate for inefficiency. As the Rural Alliance

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<sup>5</sup> Comments of The Centralized Equal Access Providers, pp. 2-4. Great Lakes Comnet, a like provider in Michigan, offered similar comments. Comments of Great Lakes Comnet, p. 5.

<sup>6</sup> Comments of The Centralized Equal Access Providers, p. 2.

<sup>7</sup> *Id.* at 4.

itself states, added mileage and lower call volumes increase transport costs.<sup>8</sup> This inefficiency would make it harder for competitors to serve in the areas that most need competition. While this may serve the interests of monopoly providers, it does not serve consumers and is contrary to sound policy. The Commission should continue to allow competitors to request direct interconnection when it is efficient to do so, and should not make such connections the mandatory responsibility of the competitive provider.<sup>9</sup>

**C. Indirect Connection is Neither Expensive Nor Difficult**

The Commission should also reject claims that routing land-to-mobile local traffic via a LATA tandem is difficult or expensive.<sup>10</sup> It is neither. As noted above, long distance traffic from small ILEC networks is routed via third-party tandems because it is efficient to do so. This method is commonly used for local traffic in Iowa, where the centralized equal access provider Iowa Network Services delivers calls between locally-rated wireless and wireline numbers in the absence of a direct connection. Many ILEC members of the Iowa Telecommunications Association have signed agreements that require the originating carrier to pay Iowa Network Services any transit fee. In Minnesota, ILEC members of the Minnesota Independent Coalition ("MIC") have negotiated an agreement with Qwest that allows them to deliver calls to wireless carriers with customers in locally-rated number blocks. A copy of that agreement is attached as

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<sup>8</sup> Rural Alliance Comments, p. 67.

<sup>9</sup> The Rural Alliance continues to argue that the Section 251(c)(2)(B) is relevant to this discussion. Rural Alliance Comments, pp. 118-19. It is not. Section 251(c)(2)(B) requires ILECs to allow technically-feasible physical interconnection within its network. 47 U.S.C. § 251(c)(2). It has no application to the rating and routing of traffic when no physical connection is requested. *Atlas Tel.*, 403 F.3d at 1265. The Commission should reject this misreading of the statute.

<sup>10</sup> See, e.g., Rural Alliance Comments, p. 99 (alleging various proposals would impose "extraordinary costs" to reach "distant points"). The Rural Alliance refers to "distant" locations 15 times and "extraordinary cost" 4 times between pages 99 and 106 of its comments.

Exhibit A. The Agreement provides that Qwest will charge the originating MIC company \$6.00 per month per trunk for the initial year of the contract, and then \$0.0027 per minute thereafter when traffic rises above *de minimus* levels. This is an inexpensive, efficient way to utilize common trunks that ride existing network paths.

The Commission should also take notice of the fact that most (and nearly all) of the ILEC members of the Rural Alliance have affiliated entities that are today providing their end users with long distance services and other advanced services. One need only pull up an ILEC web site to see the bundles of services being marketed to end users. For example, the web site for Alma Telephone, a small three-exchange Georgia rural telephone company, jointly markets long distance, data, digital cable, and other services with its wholly-owned subsidiary.<sup>11</sup> Companies with facilities, wholesale arrangements and/or resale arrangements that allow them to provide their own customers with access to the world cannot legitimately claim that technical limitations prevent them from delivering calls to a tandem switch in a LATA.<sup>12</sup>

Today, Nextel Partners must establish transit arrangements and pay transit fees to terminate calls to small ILECs. This is the cost of local competition. There is no reason why these ILECs should not bear this exact cost when their customers call Nextel Partners' numbers. The Commission should reject claims that these reciprocal obligations are expensive or present technical limitations.

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<sup>11</sup> See <http://homepage.accessatc.net/>.

<sup>12</sup> Alma is not a sponsor of the Rural Alliance comments, but participated in the comments of the Georgia Independent Telephone Companies, which supported the Rural Alliance comments. Notably, the Georgia Commission has recently required ILECs like Alma to deliver calls to locally-rated wireless numbers via a BellSouth tandem and to pay BellSouth's transit fee. *In re BellSouth Inc.'s Petition for Declaratory Ruling Regarding Transit Traffic*, Georgia Public Service Comm'n, Docket No. 16772-U, Order on Clarification and Reconsideration (May 3, 2005).

## **II. BILL-AND-KEEP IS APPROPRIATE BECAUSE SMALL ILECS DO NOT NEED TO BE PAID TWICE FOR THEIR NETWORK COSTS**

### **A. Nextel Partners Supports Bill-and-Keep**

As explained in its initial comments, Nextel Partners believes that a bill-and-keep system for intercarrier compensation would be efficient, and competitively neutral, and would send the right pricing signals to the market.<sup>13</sup> It would also eliminate a number of contentious issues raised in other parties' initial comments, including:

- The issue of "phantom traffic," and the expense associated with ensuring that every minute of use is measured;<sup>14</sup>
- Whether to maintain the MTA rule for CMRS traffic;<sup>15</sup> and
- Alternate proposals regarding how to calculate terminating compensation in a unified regime not based on bill-and-keep.<sup>16</sup>

The Commission must take into consideration the significant administrative costs that will be mitigated if it makes these issues moot by adopting a bill-and-keep regime for intercarrier compensation.

### **B. Small ILECs Do Not Need to Recover Twice for Their High Cost Networks**

Small ILECs oppose movement toward bill-and-keep by arguing that they must be paid high reciprocal compensation rates because they have high cost networks.<sup>17</sup> Nextel Partners

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<sup>13</sup> Nextel Partners Comments, pp. 4-6.

<sup>14</sup> TDS Comments, p. 10.

<sup>15</sup> Rural Alliance Comments, p. 126; Interstate Telecom Consulting Comments, p. 15; California Small LEC Comments, p. 8.

<sup>16</sup> While Nextel Partners does not address each of the various proposals, it notes that the Rural Alliance's proposal that terminating compensation be priced based on embedded costs is a significant step backwards that could not be justified by the language and the policy of the Act. See Rural Alliance Comments, p. 12.

<sup>17</sup> See Rural Alliance Comments, pp. 48-49. As noted in Nextel Partners' initial comments, this is based in part on the fundamentally-flawed proposition that local switching costs are caused by

believes that small rural ILECs are already being paid for the high cost of their networks from universal service funds and as a result rural carriers have no legitimate need to charge high reciprocal compensation rates. Without such a need, small ILECs' opposition to bill-and-keep should be rejected.

Nextel Partners conducts interconnection negotiations with small ILECs in many states, and in some cases has the opportunity to review cost studies that purport to support these companies' proposed high reciprocal compensation rates. Recently, Nextel Partners was presented a cost study from a rural telephone company in Pennsylvania that generated switching costs of approximately \$0.006 per minute. The ILEC had made assumptions indicating that it required switching revenue of \$775,000 annually to cover its switching costs. The cost study proposed to allocate these costs equally over all minutes that used the switch. Based on the most recent filings from the Universal Service Administrative Company, Nextel Partners determined that the company was receiving approximately \$377,000 annually in local switching support. In other words, approximately one half of its switching costs are being paid by federal universal service mechanisms, and yet this support was not factored into the cost study model. If one were to add in other contributions from NECA pooling, state access rates, state universal service subsidies, and customer revenue, Nextel Partners expects that there would be little or no switching costs that would need to be paid by local competitors. Nextel Partners has found this to be common – small ILECs demand high reciprocal compensation rates to pay for high levels of switching investment, even when a significant percentage of these costs are already being paid for by universal service programs.

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usage. Nextel Partners Comments, pp. 12-14. This issue is beyond the scope of these reply comments.

As the Commission is aware, interstate access rates have continued to come down as the Commission has removed implicit subsidies from access charges and increased explicit funding levels. As NECA sets access rates and pools revenues, it considers carriers' universal service funding.<sup>18</sup> Based in part on this consideration, the average NECA local switching rate element has declined significantly and is now just above \$.01 per minute.<sup>19</sup> Because these rates are based on embedded costs and include costs that are not caused by usage, they are much higher than would be generated with TELRIC methodology. Yet, they are much lower than the small ILECs would have the Commission believe.

NECA rates are also instructive with regard to transport. Under NECA Tariff No. 5 companies charge IXC's a rate of \$0.000164 per minute per mile of transport. Using this rate as a proxy, a call with 20 miles of transport would be priced at \$0.00328 per minute. Yet these same companies demand higher transport rates within reciprocal compensation rates. These data demonstrate that when universal service subsidies are attributed to network costs, claims that small carriers require high reciprocal compensation rates are without support.

Small ILECs have consistently succeeded in obtaining federal universal service support that pays them for their high-cost networks. In many cases they also obtain state universal service subsidies that allow them to earn a high rate of return as they operate these networks. These same high network costs do not need to be paid for again through intercarrier compensation charges assessed on CMRS competitors.

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<sup>18</sup> See NECA December 23, 2004, Filing Modifying Average Schedules in WT Docket No. 04-437, p. VII-9 ("[T]his section recognizes that average schedule companies will recover part of their local switching formula costs through access charges, and part through universal service support payments.").

<sup>19</sup> NECA Tariff FCC No. 5, p. 17-11 (revised July 1, 2005).

**C. There is No Compelling Evidence that Rate of Return Carriers' Rates Will Increase in a Bill-And-Keep Environment**

Despite the rhetoric, the comments filed by small ILECs fail to include compelling evidence that a bill-and-keep regime would cause meaningful increases in end-user rates. It should not be enough for carriers to speculate about rate increases – carriers opposing bill-and-keep should be required to present hard data that considers available federal support, available state support, and market dynamics. No rural LEC comments contain such an analysis.

There is no reason why state and federal support mechanisms cannot work together to ensure that rural rates remain comparable to those in urban areas in a bill-and-keep regime. Clearly, if the Commission adopts bill-and-keep it must adjust its federal support program as necessary to provide sufficient and predictable support. States, then, would have responsibility to utilize state universal service mechanisms and monitor whether comparability is being achieved. Presumably, states would be directed to review comparability in rural areas based on the urban benchmark adopted by the Commission pursuant to 47 C.F.R. § 54.316. State programs would be modified to reflect the absence of intercarrier compensation revenue. In some cases rural rates would rise to comparable levels, and in other cases, additional support would be provided to maintain comparable rates.<sup>20</sup> Yet the goals of affordability would be met.

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<sup>20</sup> The Commission should not be afraid to implement reforms that may require some small ILEC rates to rise to national levels. For example, a recent Illinois court decision indicated that local exchange rates in the state ranged from \$4 per month to \$31.20 per month. *Harrisonville Tel. Co. v. Illinois Commerce Comm'n*, 797 N.E.2d 183, 195 (Ill. App. 2003). A carrier charging a rate of \$4 per month is receiving too much universal service support. Neither universal service funding nor intercarrier compensation mechanisms are intended to guarantee small ILECs the right to maintain rates below affordable levels. In many states, however, rates well under \$20 are commonplace. Nextel Partners believes that allowing these rates to rise to an affordable benchmark level would be progress. If states wish to use state funds to reduce rates to levels below an FCC benchmark they could take action to do so under 47 U.S.C. § 254(f).

Nextel Partners also expects that many states will be legally obligated under state law to assure small ILECs earn a specific rate of return. Small ILECs in at least two states have filed lawsuits seeking to compel the state commission to operate state universal service mechanisms that guarantee those carriers a statutory rate of return. *Bluestem Tel. Co. v. Kansas Corporation Comm'n*, 109 P.3d 194, 198-99 (Kan. Ct. App. 2005) (finding that state law required Kansas universal service fund payments to be made on a per line basis considering small ILECs' embedded costs and revenue requirements); *Harrisonville Tel. Co.*, 797 N.E.2d at 187 (rural telephone companies sought universal service support that would ensure rates of return), *aff'd*, 817 N.E.2d 479 (Ill. 2004) (requiring state universal service fund to support all lines served by rural telephone companies). As a result, it is reasonable for the Commission to expect states to mitigate the risks of rate increases while providing small ILECs with more protection than they are guaranteed by the Act. *Alenco Communications, Inc., v. FCC*, 201 F.3d 608, 622 (5th Cir. 2000) (rural LECs want predictable market outcomes, which is the antithesis of the Act). This achieves every legitimate goal of universal service without relying on an inefficient and outdated intercarrier compensation system.

Small ILECs' opposition to bill-and-keep is based on their belief that federal and state regulators will be unable to support universal service without the crutch of intercarrier compensation revenue. This distrust of universal service programs is misplaced – state and federal regulators have sufficient intent and ability to protect rural consumers on an ongoing basis. The Commission should stay on the path of reform and reject rural ILEC claims that states and the Commission are incapable of providing sufficient support that ensures comparable rates in a bill-and-keep intercarrier compensation regime.

## **CONCLUSION**

Nextel Partners respectfully requests that the Commission take action consistent with the views expressed herein.

Respectfully submitted,

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